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ABSTRACT

The ombudsman, often defined as a kind of inspector general, is usually empowered to: (1) investigate in confidence, without restraint, either upon receipt of a complaint or on the ombudsman's initiative; (2) recommend to any official appropriate review of the facts; and (3) publicize findings or publicly criticize malfeasance. Various functions/duties and strategies to obtain desired results are indicated. (MJM)

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"EMPOWERED TO INVESTIGATE...ANY COMPLAINTS, CRITICISMS...
OR UNFAIR CONDUCT...ON THE PART OF THIS UNIVERSITY."

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# A PAPER ON THE ROLE OF THE OMBUDSMAN IN HIGHER EDUCATION.

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THE MODERN OMBUDSMAN IS A NEW FORM OF BUREAUCRATIC OFFICIAL, IMPORTED FROM SWEDEN, WHERE THE FIRST OMBUDSMAN WAS APPOINTED IN 1809. THE OFFICE REFLECTS ITS EARLIER ROOTS IN TRIBAL CUSTOM, WHEN A RESPECTED ELDER OF THE TRIBE WAS EMPOWERED TO DISCUSS THE TRIBE'S GRIEVANCES WITH THE CHIEF. THE OFFICE HAS HELD VARIOUS POWERS, RANGING FROM ADVISORY TO JUDICIAL. IN 1954, DENMARK'S PARLIAMENT WENT SO FAR AS TO EMPOWER THAT NATION'S OMBUDSMAN TO PROSECUTE ERRANT PUBLIC OFFICIALS FOR NEGLECT OF DUTY. THE HOLDER OF THAT OFFICE WAS DIRECTED TO: "KEEP HIMSELF INFORMED AS TO WHETHER ANY PERSON COMPRISED BY HIS JURISDICTION PURSUES UNLAWFUL ENDS, MAKES ARBITRARY OR UNREASONABLE DECISIONS, OR OTHERWISE COMMITS MISTAKES OR ACTS OF NEGLIGENCE IN THE DISCHARGE OF HIS OF HER DUTIES..."

IN AMERICAN HIGHER EDUCATION, THE POPULARITY OF THE OMBUDSMAN GREW AT ABOUT THE SAME PACE AS THE MULTIVERSITY. THE SAME ERA SAW AN INCREASE IN CAMPUS TENSIONS, PROMPTING THE APPOINTMENT OF THE PRESIDENT'S COMMISSION ON CAMPUS UNREST (ALSO KNOWN AS THE SCRANTON COMMISSION). THIS BODY RECOMMENDED REFORM IN CAMPUS GOVERNANCE, INCLUDING THE ESTABLISHMENT OF SOME KIND OF CAMPUS OMBUDSMAN. THE NEED FOR SUCH AN OFFICIAL HAD ALREADY BEEN PERCEIVED BY SOME INSTITUTIONS,

AND PRIOR TO THE ISSUANCE OF THAT COMMITTEE'S REPORT, MANY CAMPUSES HAL ESTABLISHED THE OFFICE IN VARYING FORMS, BEGINNING AT SIMON FRAZER UNIVERSITY IN 1965. VARIOUS OTHER SCHOOLS FOLLOWED SUIT, NOTABLE AMONG THEM, BY VIRTUE OF SUCCESS (VARIOUSLY DEFINED), MICHIGAN STATE UNIVERSITY AND CORNELL.

I WORKED AS AN OMBUDSMAN AT C. W. POST CENTER OF LONG ISLAND UNIVERSITY, UNDER PRESIDENT ROBERT PAYTON. MR. PAYTON IS, WITHOUT A DOUBT, ONE OF THE MOST TALENTED AND HUMANE PRESIDENTS ANY COLLEGE COULD HAVE. I NO LONGER WORK FOR HIM, AS I HAVE RETURNED TO GRADUATE SCHOOL, BUT I WANT YOU TO KNOW THAT THE DILEMMAS I AM ABOUT TO SPEAK OF ARE COMMON TO ALL COLLEGES, AND NOT, AS SOME OF YOU MIGHT EXPECT, SPECIFIC TO C. W. POST.

I WAS AN OMBUDSMAN FOR TWO YEARS, AFTER BEING APPOINTED BY PRESIDENTIAL DECREE. THE COLLEGE I WORKED FOR IS TUITION DEPENDENT, PRIVATE, AND HAS ABOUT 8000 FULL TIME EQUIVALENT STUDENTS IN ITS UNDERGRADUATE AND GRADUATE SCHOOLS. I WAS RESPONSIBLE TO, AND FOR, ALL CONSTITUTENTS FROM JANITORS TO FACULTY. AFTER TWO YEARS, I MUST REPORT THAT THE JOB OF OMBUDSMAN IS SECOND IN DIFFICULTY ONLY TO THAT OF BEING A FATHER. PART OF THIS DIFFICULTY LIES IN THE NATURE OF UNIVERSITIES. ANOTHER PART, THE LESSOR PART, LIES IN THE NATURE OF THE ROLE OF OMBUDSMAN.

THE OMBUDSMAN IS USUALLY DEFINED AS A KIND OF INSPECTOR GENERAL. THE POWERS OF THE OFFICE ARE CONSIDERED TO BE: (1) THE RIGHT TO INVESTIGATE IN CONFIDENCE, WITHOUT RESTRAINT, EITHER UPON RECEIPT OF A COMPLAINT OR ON THE OMBUDSMAN'S INITIATIVE. (2) THE RIGHT TO RECOMMEND

TO ANY OFFICIAL APPROPRIATE REVIEW OF THE FACTS. (3) THE RIGHT TO PUBLICIZE FINDINGS OR PUBLICLY CRITICIZE MALFEASANCE.

USUALLY, THE OMBUDSMANS OFFICE IS SPECIFICALLY DENIED SEVERAL POWERS, TO WHIT: (1) THE POWER TO OVERTURN ANY DECISION OF THE EXISTING AUTHORITIES; (2) THE POWER TO INTERVENE IN ANY SITUATION BEFORE EXISTING REVIEW MECHANISMS HAVE BEEN ATTEMPTED. IN OTHER WORDS, THE OMBUDSMAN IS NOT A SHORT CUT THROUGH THE POWER STRUCTURE. (NOTE ...THAT THE REQUIREMENT IS THAT THE NORMAL REVIEW BE ATTEMPTED, NOT EXHAUSTED. EXHAUSTION SETS IN AT DIFFERENT TIMES FOR DIFFERENT PEOPLE, AND THE COMPLAINTANT USUALLY FEELS IT LONG BEFORE THE BUREAUCRACY.)

IN THAT BIT OF SOCIAL ENGINEERING CALLED C.W. POST CENTER, THE OFFICE OF THE OMBUDSMAN WAS ESTABLISHED BY THE PRESIDENT. IN HIS PUBLIC ANNOUNCEMENT TO THE CAMPUS COMMUNITY, PRESIDENT PAYTON SAID: "THE OMBUDSMAN IS ONE MAN YOU SHOULD ALL BE AWARE OF, EMPOWERED TO INVESTIGATE ON YOUR BEHALF, AND ON BEHALF OF THE FACULTY AND STUDENTS, ANY COMPLAINTS, CRITICISMS, OR UNFAIR CONDUCT ON THE PART OF THIS INSTITUTION. HE IS TO BE AN INSTITUTIONAL GADFLY." THIS MANDATE

ENCOMPASSED OVER 800 RECORDED COMPLAINTS IN TWO YEARS, DEALING WITH EVERYTHING FROM TENURE DISPUTES TO SIT-INS, ARRESTS, AND PARKING TICKETS. GOD BLESS PARKING TICKETS...

I DEALT WITH ALL THE PROBLEMS DR. ELIAS DID, AND ALSO SPENT A LOT OF TIME ON DRUG CASES, WOMENS RIGHTS, AND STUDENTS ACCUSING JUST ABOUT EVERYBODY OF JUST ABOUT EVERYTHING. I WORKED WELL, I THINK, WITH UNION MEMBERS, STUDENTS, SECRETARIES, AND FACULTY COMMITTEES. THE OFFICE SEEMS TO HAVE EARNED THE RESPECT OF THE CAMPUS FOR ITS EFFECTIVENESS.

MANY OF THE COMPLAINTS I DEALT WITH AROSE FROM THE DIFFICULTIES COMMON TO ALL CHANGING BUREAUCRATIC STRUCTURES. SOME RESULTED FROM IGNORANCE, OR REPRESENTED HONEST MISTAKES. A FEW ORIGINATED IN MALACE. MOST WERE REMEDIED WITH DISPATCH BY THE APPROPRIATE OFFICIAL ONCE CALLED TO HIS ATTENTION. THOSE INVESTIGATIONS WHICH REVEALED BAD ADMINISTRATIVE PRACTICE OFTEN CAUSED THE CHANGE IN THE PRACTICE.

AFTER TWO YEARS I CONCLUDED THAT C.W. POST WAS WELL RUN, WITH SOME SPOTS IN NEED OF IMPROVEMENT..BUT IN GENERAL A CREDIT TO ITS OFFICERS. MOST OF THE ENDURING DIFFICULTIES SEEMED TO STEM FROM THE VARIETY OF DEFINITIONS OF THE ROLE OF THE UNIVERSITY IN OUR CHANGING SOCIETY.

IN LIGHT OF THE ABOVE JOB DESCRIPTION, I WANT TO SPEAK ABOUT TWO ISSUES. THE FIRST IS THE GENERAL NOTION THAT SOCIAL REALITY IS A SOCIAL CONSTRUCTION. THE SECOND HAS TO DO WITH THE DILEMMAS INVOLVED IN OPERATIONALIZING THE OMBUDSMANS ROLE IN THE CONTEXT OF A SOCIALLY CONSTRUCTED REALITY LIKE A UNIVERSITY.

DR. PETER BERGER, AUTHOR OF A BRILLIANT BOOK ENTITLED "THE SOCIAL CONSTRUCTION OF REALITY," DESCRIBES THE CREATION OF SOCIAL REALITY AS A PROCESS WHEREIN THE GROUP CONSENTS TO VALUE SOME EXPERIENCES OR RITUALS, WHETHER THEY INTRINSICALLY POSSESS VALUE OR NOT. HE SAYS THAT THE REPEATED INVOCATION OF SOCIAL CONSTRUCTS LENDS THEM VALIDITY, FORCE, AND VALUE. AN EXAMPLE OF THIS WOULD BE A RELIGIOUS RITUAL, OR A SOCIAL PROCESS SUCH AS PLEDGING THE FLAG. ACCORDING TO DR. BERGERS DEFINITIONS, THE UNIVERSITY, WITH ITS GRADES, DEGREES, STATUS SYMBOLS, AND UNIFORMS, IS SUCH A SOCIAL CONSTRUCT.

THE ROLE OF THE OMBUDSMAN INVOLVES INVOKING THE HIGHEST SOCIAL RHETORIC, IN ORDER THAT THE SOCIAL CONSTRUCT MAY ATTAIN, OR BE REMINDED TO TRY TO ATTAIN, ITS MOST HONORABLE FORM. THIS IS TRUE WHETHER ONE IS AN OMBUDSMAN IN A PRISON, OR A HOSPITAL OR A UNIVERSITY. WHEN ONE IS CALLED UPON TO

BE AN OMBUDSMAN, YOU ARE REMINDED BY THE LITERATURE, AND THOUGHTFUL FRIENDS, THAT YOU HAVE NOW BECOME A MORAL FORCE. YOU EMBODY A PUBLIC STATEMENT THAT YOUR INSTITUTION VALUES FAIR PROCESS AND INTEGRITY IN THE PURSUIT OF ITS DAILY COMMERCE. YOU ARE, SO TO SPEAK, VESTED WITH A PRIGGISH MANTEL, LIKE A HAIR SHIRT YOU WEAR AROUND CAMPUS FOR THE COMMON GOOD. ALMOST INEVITABLY YOU BECOME RESPECTED, BUT NOT LIKED. WORSE, YOU MUST FOSTER THIS AWFUL IMAGE IF YOU ARE TO DO YOUR JOB WELL. YOU SPEAK IN LOFTY PHRASES SUCH AS "FAIRNESS" AND "ACADEMIC FREEDOM" AND "DUE PROCESS" AND "PROFESSIONAL ETHICS." IT IS HOPED BY YOUR SPONSORS THAT THE PUBLIC INVOCATION OF THESE VALUE LADEN TERMS WILL RAISE THE GENERAL TENOR OF THE INSTITUTION. BASED ON MY EXPERIENCE, I THINK IT DOES.

DR. DREWS, IN HIS PAPER ENTITLED "REFLECTIONS ON THE EVOLVING ROLE OF THE OMBUDSMAN IN HIGHER EDUCATION," SUGGESTS THAT THE RISE OF THE OMBUDSMANS OFFICE ON CAMPUS PARALLELS THE DECLINE OF THE DEAN OF STUDENTS.

ALTHOUGH I DID NOT BELIEVE THAT WHEN I WAS AN OMBUDSMAN, IN RETROSPECT I THINK HE IS CORRECT. IN FACT, I THINK THAT THE

RISE OF THE UMBUDSMANS OFFICE PROBABLY PARALLELS THE DEMISE OF JUST ABOUT EVERY ROLE TRADITIONAL TO HIGHER EDUCATION IN AMERICA, REGARDLESS OF THE ENDURANCE OF TITLES. AS THE SOCIALLY CONSTRUCTED REALITY OF HIGHER EDUCATION IS ALTERED, OUR SYSTEMS HAVE CALLED FORTH SECULAR BISHOPS TO PONTIFICATE ON OUR UNIVERSITIES BUSINESS MORALITY AND ACADEMIC ETHICS. THESE NEW OFFICERS ARE THE OMBUDSMAN AND IT IS ONE OF THEIR FUNCTIONS TO SEE TO THE ORDERLINESS OF THE EVOLUTIONARY PROCESS.

MEETINGS SUCH AS THIS ONE CONTINUE TO SEEK THE IMPROVEMENT OF OUR SYSTEM OF HIGHER EDUCATION, AND I TRUST THEY WILL BE WITH US FOR SOME TIME TO COME. HIGHER EDUCATION NEEDS TO PULL BACK A BIT FROM ITS DAILY AFFAIRS FROM TIME TO TIME, AND EXAMINE ITS GOALS, ACHIEVEMENTS, AND FAILURES. AFTER BEING AN OMBUDSMAN I BELIEVE THAT MOST EDUCATORS ARE OF GOOD FAITH, STRIVING TO DO THEIR BEST. I ALSO THINK THAT, IN ORDER TO SURVIVE, MANY UNIVERSITIES ARE BEING BOLDLY DECEITFUL, SO MUCH SO THAT THE WEARER OF THE PRIGGISH MANTEL IS UNABLE TO SEPARATE THAT REALITY WHICH IS COMMONLY HELD BUT DECEITFUL FROM THAT WHICH IS PRIVATELY HELD AND DECEITFUL.

THIS BRINGS ME TO THE SECOND AREA I WISHED TO ADDRESS... THE PROBLEMS OF OPERATIONALIZING THE OFFICE.

WHEN A PROFESSOR GRADES A STUDENT UNFAIRLY, AND THE STUDENT SEEKS REDRESS, COMPLAINING THAT HE HAS BEEN BADLY USED AND THAT HIS ACCUM WILL DROP, HE IS ESSENTIALLY COMPLAINING OF A DISHONEST USE OF A DECEITFUL SYSTEM. ANY FAIR MINDED EDUCATOR WILL, IF DRUNK ENOUGH, ADMIT THAT GRADES HAVE LITTLE MEANING IN A CLASSROOM, LESS WHEN COMPARED CROSS CAMPUS, AND STILL LESS WHEN USED AS SOME ENTITY TO MULTIPLY BY A CREDIT HOUR (ANOTHER DECEIT) TO ACHIEVE AN ACCUM. (WHATEVER THAT IS)...AND 128 A MAKES A DEGREE..YEARS IN RESIDENCE .."TO GIVE GRADUATES OUR STAMP," OR DEPARTMENTS WHICH WILL NOT RECOGNIZE WORK DONE AT ANOTHER ACCREDITED INSTITUTION AS SATISFYING MAJOR REQUIREMENTS MIGHT BE FURTHER EXAMPLES. SO MIGHT VAGUE "STUDENT FEES" OR "LAB FEES" WHEN THE COURSE HAS NO LAB. REQUIREMENTS WHICH COMPEL STUDENTS TO RESIDE IN CAMPUS DORMATORIES "FOR EDUCATIONAL REASONS" WHEN THE REAL REASON IS THAT THE COLLEGE HAS FACILITY AND CONSTRUCTION PAYMENTS TO MEET, FIT THIS CATEGORY. SO DO UNIVERSITIES WHICH COMPEL STUDENTS WHOSE LEGAL RESIDENCE IS WITHIN A GIVEN

RADIUS OF THE SCHOOL, TO TAKE ALL THEIR SUMMER COURSE WORK WITH THEM INSTEAD OF A MORE CONVENIENT, OR CHEAPER, INSTITUTION. THE STATED REASON IS ACADEMIC; THE TRUTH IS THAT THE TUITION MONEY IS NEEDED. THE PHRASE, 'STUDENTS SHOULD SEEK THE PERMISSION OF THE DEAN" COVERS A MULTITUDE OF SUCH SINS.

THESE GENERALLY HELD MYTHS AND OTHERS YOU CAN ALL THINK OF, CONSTITUTES A VERY REAL PROBLEM FOR OMBUDSMEN. THE SURVIVAL OF HIS INSTITUTION OR OF HIGHER EDUCATION AS WE KNOW IT TODAY MIGHT DEPEND ON THEIR EXISTENCE.

ON A PRAGMATIC LEVEL, THE EXISTENCE OF THESE PRACTICES THREATEN THE OMBUDSMANS EFFECTIVENESS AND CREDABILITY WITH HIS CONSTITUENCY. THEY TO, SEE THE DILLUSIONS, OR ILLUSIONS, AND CALL THEM TO QUESTION. THE BEST I WAS EVER ABLE TO DO WHEN CONFRONTED WITH SUCH AN EXAMPLE WAS MUSTER A KNOWING WINK, OR A HELPLESS SHRUG.

EARLY IN MY TENURE AS OMBUDSMAN I DID SOME SERIOUS THINKING ABOUT THE NATURE OF MY NEW POWER. RESEARCH REVEALED THAT A TRADITIONAL OMBUDSMAN HAD NONE, SHORT

OF THE GLARE OF PUBLICITY OR THE THREAT OF IT. A FEW MISTAKES LATER I DISCOVERED THAT USING PUBLICITY WORKS ONLY WHEN IT WORKS, AND HURTS THE OMBUDSMAN BADLY WHEN IT DOESN'T WORK. FOR EXAMPLE, SUPPOSE THE OMBUDSMAN WERE TO IDENTIFY A DUBIOUS PRACTICE, SUCH AS I HAVE MENTIONED ABOVE, BEING PURSUED BY THE ADMINISTRATION. AFTER SUITABLE, DISCRETE EFFORTS AT HAVING THE POLICY CHANGED, HE MIGHT DECIDE THAT THE GLARE OF PUBLICITY IS WARRANTED. ASSUME THAT HE ENGENDERS SUCH PUBLICITY, AND THE PRACTICE REMAINS UNCHANGED. SHORT OF RESIGNING, THERE IS NO FURTHER STEP TO BE TAKEN. BY HAVING TRIED AND FAILED PUBLICLY, THE OMBUDSMAN HAS BEEN EXPOSED TO ALL AND SUNDRY AS HAVING NO POWER. A SECOND OR THIRD PUBLIC FAILURE WOULD SPELL THE END OF THE OMBUDSMAN'S USEFULNESS.

ANOTHER WAY OF LOOKING AT THE SAME DILEMMA IS TO COMPARE THE OMBUDSMAN'S POWERE TO A WATER PISTOL. SINCE IT DOES NOT POSSESS ANY FORCE, LIKE A BULLET, IT CAN BE BRANDISHED ONLY WHEN ONE IS FAIRLY SURE ONE NEED NOT FIRE IT. YOU CAN ATTEMPT A HOLDUP WITH A WATER PISTOL, AND, IF IT LOOKS REAL ENOUGH, IT WILL GET YOU BY. IF THE NEED TO USE FORCE BECOMES REAL, AND YOU SQUIRT YOUR VICTIM, YOU STAND REVEALED.

IN OTHER WORDS, A WISE OMBUDSMAN NEVER PULLS THE TRIGGER UNLESS HE IS ABSOLUTELY SURE HIS VICTIM WILL PLAY DEAD.

THERE ARE VARIOUS WAYS AROUND THIS POWERLESSNESS, OF COURSE. ONE CAN CALL ON SOMEONE WITH REAL POWER TO ACTUALLY IMPLEMENT THE NECESSARY PROCEDURE, IF HE WILL. I'VE DONE THAT, AND IT WORKS WELL. YOU CAN ALSO GET OTHER GUYS WITH WATER PISTOLS TO SQUIRT THEIRS WITH YOU. I'VE DONE THAT, TOO, AND IT WORKS IF PLANNED WELL. RESOLUTIONS OF THE FACULTY, STRAW POLLS OF THE STUDENTS, COMMISSIONS OF INQUIRY, PUBLIC HEARINGS, LEGAL ADVISORIES TO THE DEANS, THEY ALL WORK IF AIMED WELL. HOWEVER, ONE MUST NEVER USE THEM UNLESS THERE IS AN ABSOLUTE CERTAINTY THAT THEY WILL WORK, OR YOUR COLLEAGUES IN THE EFFORT WILL ALSO BE EXPOSED AS POSSESSING ONLY A WATER GUN, AND THAT IS AWKWARD.

ONE NEAT TACTIC IS SURRENDER.

ASSESS THE SITUATION..TRY MIGHTILY BEHIND THE SCENES.. INVOKE ALL SORTS OF ALLIES..IF YOU ARE NOT GOING TO WIN, DO NOT FIGHT AND LOOSE IN PUBLIC. SURRENDER..

ADLAI STEVENSON ONCE REMARKED THAT THE REASONS RESIGNATIONS ON PRINCIPLE DON'T WORK IS THAT THEY ONLY HAPPEN ONCE. I BELIEVE THAT, AND I PRUDENTLY, DID NOT RESIGN. I SURRENDERED, ON AN OCCASION OR TWO, AND IN RETROSPECT THOSE OCCASIONS WERE USUALLY WHEN THE MAGNITUDE OF THE COMMONLY HELD DISHONESTY WAS SUCH THAT THE "LEGALITY" WOULD HAVE TRIUMPHED OVER THE "MORAL" OR "ETHICAL".

IN OTHER WORDS..AN OMBUDSMAN IN HIGHER EDUCATION FUNCTIONS IN A WORLD OF SOCIAL CONSTRUCTION COMMONLY HELD TO BE AUTHENTIC, AND IT IS HIS JOB TO MAKE THE INTERNAL WORKINGS CONSISTENT..THAT THE BASIC UNDERPINNINGS DO NOT STAND CLOSE SCRUTINY IS FUNCTIONALLY IRRELEVANT.

BEING AN OMBUDSMAN IS LIKE BEING A FATHER BECAUSE YOU CAN'T REALLY HOPE TO MUCH MORE THAN NUTURE, GUIDE, AND PROTECT. THE WORLD IS A BIG PLACE, AND AN UNJUST ONE. THE COMPROMISES MADE WITH PRINCIPLE FOR THE SAKE OF SURVIVAL ARE PAINFUL, AND GNAW. YOUR KID MIGHT LOOSE RESPECT FOR YOU, OR YOU FOR YOURSELF.

I THINK THE ROLE OF THE OMBUDSMAN IS CRUCIAL TO AMERICAN HIGHER EDUCATION TODAY. IT IS A VALUABLE, DIRTY JOB. IT WILL, PERHAPS, BE LESS NEEDED AS THE RHETORIC OF OUR PROFESSION IF MATCHED BY THE REALITY.